

**(1997) 05 P&H CK 0039**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** First Appeal From Order No. 171-M of 1988

Ranjit Singh

APPELLANT

Vs

Balwant Kaur

RESPONDENT

**Date of Decision:** May 14, 1997

**Acts Referred:**

- Hindu Marriage Act, 1955 - Section 13(1)

**Citation:** (1998) 118 PLR 704 : (1997) 4 RCR(Civil) 622

**Hon'ble Judges:** V.K. Jhanji, J

**Bench:** Single Bench

**Advocate:** Ram Singh, for the Appellant; Nemo, for the Respondent

**Final Decision:** Dismissed

**Judgement**

V.K. Jhanji, J.

This is husband's appeal directed against judgment of Additional District Judge, Ludhiana, whereby the petition filed by him u/s 13 (1-a) (1-b) of Hindu Marriage Act for dissolution of marriage has been dismissed.

2. Appellant filed petition for divorce against his wife, Balwant Kaur, with whom he had got married on 3.7.1983, by alleging that while pregnant, she deserted him on 2.1.1984 with the intention not to return to the matrimonial home. He alleged that she got the pregnancy terminated before maturity which caused mental shock to him. He alleged that during the time respondent had been staying with him, her behaviour was rude and insulting. He alleged that she created ugly scenes which resulted in lowering his prestige. He alleged that he had legitimate apprehension in his mind that it would be injurious and fatal to re-establish the matrimonial home with the respondent. Accordingly, he ought decree of divorce on the ground that respondent has deserted him without reasonable cause for more than two years with the intention not to resume cohabitation and also on the ground that she has treated him with mental cruelty. On notice of the petition, respondent in her written

statement denied the allegations made in the petition. She stated that the petition is barred under Order 23, Rule 1, Code of Civil Procedure, as the appellant had earlier filed petition u/s 13 of the Act which was got dismissed as withdrawn without any sufficient cause. She denied to have deserted him. She stated that she was turned out of the house after giving beatings. In regard to the allegations of cruelty, she denied to have ever treated the appellant with cruelty or lowered his prestige. On the pleadings of the parties, the trial Court framed the following issues:-

1. Whether the respondent is guilty of desertion and cruelty as alleged? OPA.
2. Whether the application is bad due to principles of res judicata? OPR.
3. Whether the petitioner is entitled to divorce as prayed? OPA.
4. Relief.

The learned trial Court on the basis of evidence brought on record by the parties; dismissed the petition for divorce. Hence, the present appeal.

3. It has been contended by the counsel for the appellant that the parties to the marriage are living separately after six months of the marriage and it being a broken marriage, divorce is the only solution. He contended that the wife has levelled charge of beatings by the husband and she having failed to prove the said charge, the appellant is entitled to decree of divorce.

4. After hearing the learned counsel for the appellant and going through the record, I am of the view that this appeal has no merit. From the facts proved on record, it is clear that the appellant himself is responsible for the broken marriage. Appellant was employed as school teacher in district Sangrur and used to visit his village Bhutta on holidays only. He had taken the respondent to reside with him at the place of his posting only for seven days. Niranjan Singh, PW-2, and Gurcharan Singh, PW-4, have been examined by the appellant to prove the instances of cruelty, but they have not stated that the respondent ever abused or insulted the appellant at the place of his posting. As a matter of fact, Gurcharan Singh in his statement stated that respondent had given a slap on the face of the mother of the appellant, but this was not the case set up by the appellant in his plaint. Previous to the present petition, appellant had filed a petition for divorce on 30.1.1986 and the only ground taken therein was desertion on the part of the respondent. Cruelty on account of termination of pregnancy without the consent of the appellant or insulting or rude behaviour of the respondent towards the appellant was never pleaded in that case. Had behaviour of the respondent been rude and insulting towards the appellant or had she got the pregnancy terminated without his consent, appellant would have mentioned these instances in his petition for divorce. Admittedly, these were not the allegation made in the petition previously filed by the appellant and therefore, the plea of the appellant that the behaviour of the respondent had been cruel towards him has rightly been rejected by the Additional District Judge and in my view, no

interference is called for in this appeal. As regards the ground of desertion, appellant was not only required to prove the factum of physical separation but also *animus deserendi*, i.e. intention to bring cohabitation to an end. In this case, evidence shows that the respondent had been telling the appellant to keep her at his place of posting, but the appellant had insisted that she should live with his parents in village Bhutta. In this situation, appellant himself is responsible for making the respondent" live with her parents. She had no intention to stay away permanently as it has come on record that in the trial Court, respondent had made an unconditional offer to go and live with the appellant and it was the appellant who refused to settle her in the matrimonial home. Accordingly, appellant is not entitled to the decree of divorce on the ground of desertion as well.

Consequently, this appeal shall stand dismissed. No costs.